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IN THE

Supreme Court of the United States

October Term, 1969
No. 1014

OWEN B. LAMPMAN and THRIFTIMART, INC., a corporation,

Petitioners,

vs.

UNITED STATES OF AMERICA, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, and JESSE W. CURTIS, a Judge thereof,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petition for Rehearing on Denial of Writ of Certiorari (Rule 58).

WILLIAM J. CURRER, JR.,
548 South Spring Street,
Suite 939,
Los Angeles, Calif. 90013,
(213) 628-9152,
Counsel for Petitioners.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 685-9790

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petition for Rehearing on Denial of Writ of Certiorari (Rule 58).

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Owen B. Lampman and Thriftimart, Inc., petition this Court for rehearing of the order denying their Petition for Writ of Certiorari made by this Court February 24, 1970. This Petition is made on the grounds permitted by Rule 58(2), to wit:

A. Intervening circumstances of substantial and controlling effect.

B. Substantial grounds available to petitioners though not previously presented.

I.

Intervening Circumstances.

A. Certiorari Has Been Granted in Donaldson v. United States.

Kevin L. Donaldson, Etc. v. United States of America and John P. Grady, et al., October Term, 1969, Number 942, arose out of the objection of Donaldson to an Internal Revenue Service summons and enforcement proceedings commenced by the Service seeking to enforce the summons. Among other things, the opposition to the summons was based upon the claim that the summons was for an improper purpose, that is to say, it sought to obtain evidence for use in a criminal prosecution. Apparently the summons was broad and unlimited in scope and did not state the things to be seized or the purpose of the seizure. Petitioner relied upon *Reisman v. Caplin,* 375 U.S. 440, 449-450, 84 S.Ct. 508, 513 (1964). The United States in its Memorandum did not oppose the granting of certiorari and the Solicitor General in his Memorandum has pointed to a dispute with respect to the meaning of the Court's language in *Reisman, supra,* and its reference to the right to judicial review of an administrative summons which is issued for an improper purpose.

United States v. Powell, 379 U.S. 48, 58, 85 S. Ct. 248 (1964).

Thus the Solicitor General states in his Memorandum that since the question of "improper purpose" is presented by the *Donaldson* case and since in most criminal

investigations in which the Internal Revenue Service seeks enforcement of the summons it is compelled to argue and litigate the contention of the respondent or intervenor that the summons was improper, certiorari should be granted to settle the issue. In *Donaldson* the Court granted certiorari February 27, 1970.

B. If Donaldson Prevails, Then Lampman and Thriftimart Should Prevail.

As the Solicitor General has stated, in most summons enforcement proceedings, the Internal Revenue Service is met with the argument that the summons was improper, citing *Reisman v. Caplin, supra.* We do not doubt this for a minute, judging by the summons in this case. That summons was improper for the reason that it sought a re-examination of the books and records of Thriftimart, Inc., for certain years without cause, it was general and included virtually every scrap of paper of the company for the years sought to be re-examined, it was issued to permit the Special Agent to examine to find any crime he could find, a purpose defined as improper by *Reisman, supra,* and it sought to circumvent the limitations imposed by statute, the Constitution and this Court's determinations in *Camara v. Municipal Court,* 387 U.S. 523, 87 S.Ct. 1727 (1967), *See v. City of Seattle,* 387 U.S. 541, 87 S.Ct. 1737 (1967), and *Aguilar v. Texas,* 378 U.S. 108, 84 S.Ct. 1509 (1964). The Internal Revenue Service did not seek to enforce that summons. It conceded by its failure to follow enforcement procedures that the summons was improper.

But that did not prevent its immediately turning to a *subpoena duces tecum* under the guise of a "grand

jury" investigation whereby the same books and papers sought by the summons are to be turned over to the same agents of the Internal Revenue Service, the United States Attorney and representatives of the Attorney General. By simply turning to Rule 17(c), FRCrP, and using the "grand jury" as its own discovery device, the Internal Revenue Service seeks to do indirectly what it cannot do directly. To do this, of course, it must manipulate and abuse the entire grand jury process.

The importance and significance of this is that if the Court were to decide *Donaldson, supra,* in favor of the peetitioner Donaldson, or further define improper use of the summons procedure so as to compel the Internal Revenue Service to abide by the law and the Constitution, it would only mean that the decision of this Court would be circumvented by the supposed and pretended use of a "grand jury subpoena", issued without the grand jury's knowledge, filled in by a prosecutor after issuance in blank under Rule 17, FRCrP.

We say, therefore, that if the Court is to define and establish the appropriate limits of searches and seizures under an Internal Revenue Service summons, it must in view of the conduct exhibited in the *Lampman* case (and the companion *Lewis* case, October Term, 1969, Number 1020) also consider and determine the abuse of the subpoena duces tecum process, the relationship of Rule 17(c) to the new discovery Rule 16 of the Federal Rules of Criminal Procedure. Thus the Court has granted certiorari in *Donaldson* and *United States v. Gifford-Hill-American, Inc.* If the problem is to be properly decided so that it is not the subject of piecemeal litigation and piecemeal appeals, certiorari should be granted in this case also so that the entire problem will

be before the Court. The Government expresses horror at piecemeal appeals, but by resisting our petition for certiorari, it is seeking piecemeal litigation which amounts to the same thing.

We respectfully submit that certiorari having been granted in *Donaldson* and the *Gifford-Hill-American* cases, certiorari should be granted in this case.

C. The Constitutional Limitations on the Administrative Summons or Subpoena Should Apply Equally to Rule 17, FRCrP.

The fundamental reasons for the limitations on the administrative summons or subpoena including the summons of the Internal Revenue Service are found in the searches and seizures clause of the Constitution. The searches and seizures clause must be applied to all alike by reason of the equal protection clause.

See v. Seattle, 387 U.S. 541, 87 S.Ct. 1737 (1967);

Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727 (1967);

Reisman v. Caplin, 375 U.S. 440, 449, 84 S.Ct. 508, 513 (1964).

Certainly the same limitations must apply to 17(c), FRCrP. If the Government and any of its agents may use 17(c), FRCrP as an omnibus search and seizure provision with their own agents examining the material searched and seized by the *subpoena duces tecum* and by holding the material searched and seized in the possession of the United States Attorney, then all the lofty rhetoric in *See, Camara, Reisman, supra,* cases involving warrants like *Aguilar v. Texas,* 378 U.S. 108, 84 S.Ct. 1509 (1964), is meaningless. In fact if the Government

can do what it claims it can do under Rule 17(c) and what it is now attempting to do in this case, there is no longer any reason for the constitutional limitations on searches and seizures nor is there any real reason for the grand jury to exist. We should at least be honest about it and simply abolish these troublesome constitutional ideals.

If this Court really intends to open the flood gates to permit any kind of search and seizure imaginable, with or without even the ordinary protections concerning description, purpose and relevancy accorded a *subpoena duces tecum* in a civil case, it will deny this petition and also reverse its order granting certiorari in *Donaldson*. To hold in a case like *Donaldson* that improper summonses may not be issued is meaningless unless the Court also holds that 17(c), FRCrP is limited to a proper purpose based on a proper showing as required by *See, Camara, Reisman* and *Aguilar, supra.*

This use of 17(c), FRCrP is of course contrary to the true intent and purpose of the rule. The rule was not intended as a discovery device. It was intended obviously and solely as a means of producing trial evidence at trial. It was never intended to be used as an all-encompassing omnibus method of discovery to be used by the prosecutor without limit. 17(c) does not in fact even suggest that it is to be used other than for a court proceeding. The record shows that the subpoena in this case was not returnable to the grand jury but to a Government agency office. The record in this case and Mr. Hansen's affidavit in particular show that 17 FRCrP was used solely to circumvent the defective summons which Special Agent Frank Andy had issued in the field.

We submit that the granting of certiorari in *Donaldson* and denying certiorari in this case will not only prevent consideration by this Court of the actual problem before the Court but it will also work a grave injustice upon the petitioners in this case.

II.

Other Substantial Grounds Available to Petitioners but Not Previously Presented.

We are convinced that there should be an expression by this Court of the true role of the grand jury in the federal system of criminal justice. As matters now stand the grand jury is simply not permitted to function as it was intended to function at the time of the adoption of the Constitution.

With the exception of the discrimination cases and cases involving bias and some unusual circumstances, the grand jury cases considered by this Court have primarily emphasized the function of the grand jury as a "grand inquest, a body with power of investigation and inquisition."

The emphasis on inquisition has led not to the inquisition of the grand jury, but inquisition by the prosecutor wih the protective function destroyed and the inquisitorial function usurped.

We attribute this result to the fact that the first case decided by this Court directly involving a grand jury was decided in 1872, almost one hundred years after the adoption of the Constitution.

> *Stout v. People etc.*, 13 Wall. (80 U.S.) 474, 20 L.Ed. 512 (1872).

By that time the industrial revolution was well on its way and government regulation of business commenced.

They felt necessity of that time was the grand inquisition.

This was a departure from the purpose of the grand jury as a protective body. The original purpose and function of the grand jury as a protector is well stated by Mr. Justice Field in his famous charge.

> Charge of Mr. Justice Field, The Grand Jury, San Francisco, 30 Fed. Cas. 18,255, 1872, page 992.

We believe that a classification of the grand jury cases decided by this Court and the effect they have had on the lower courts and prosecutors will show the need to consider this problem as it is presented in this case.

The Court has held that discrimination (originally by law and later by practice) in the racial composition of a grand jury is unconstitutional.

> *Strauder v. State of West Virginia*, 100 U.S. 303, 25 L.Ed. 664 (1880);
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> *Ex parte Commonwealth of Virginia*, 100 U.S. 319, 25 L.Ed. 667 (1880);
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> *Neal v. Delaware*, 103 U.S. 393, 26 L.Ed. 567 (1880);
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> *Bush v. Commonwealth of Kentucky*, 107 U.S. 110, 1 S.Ct. 625, 27 L.Ed. 354 (1883);
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> *Smith v. State*, 311 U.S. 128, 61 S.Ct. 164, 85 L.Ed. 84 (1940);
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> *Hill v. State of Texas*, 316 U.S. 400, 62 S.Ct. 1159, 86 L.Ed. 1559 (1942);
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> *Patton v. State of Mississippi*, 332 U.S. 463, 68 S.Ct. 184, 92 L.Ed. 76 (1947);
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> *Cassell v. State of Texas*, 339 U.S. 282, 70 S.Ct. 629, 94 L.Ed. 839 (1950);

Reece v. State of Georgia, 350 U.S. 85, 76 S.Ct. 167, 100 L.Ed. 77 (1955);

Eubanks v. State of Louisiana, 356 U.S. 584, 76 S.Ct. 970, 2 L.Ed. 2d 991 (1958);

Sims v. Georgia, 389 U.S. 404, 88 S.Ct. 523, 19 L.Ed. 2d 634 (1967);

Whitus v. State of Georgia, 385 U.S. 545, 87 S.Ct. 643, 17 L.Ed.2d 599 (1967);

Jones v. Georgia, 389 U.S. 24, 88 S.Ct. 4, 19 L.Ed.2d 25 (1967);

Arnold v. North Carolina, 376 U.S. 773, 84 S.Ct. 1032, 12 L.Ed.2d 77 (1964);

Norris v. State of Alabama, 294 U.S. 587, 55 S. Ct. 579, 79 L.Ed. 1074 (1935).

These cases involving discrimination recognize the protective function of the grand jury. When the Court has considered the production of books, papers and records, the Court has emphasized in the extreme the virtual right of the prosecutor to use the grand jury as his discovery tool in spite of the fact that this itself destroys the independence of the grand jury and its true constitutional function.

Hale v. Henkel, 201 U.S. 43, 26 S.Ct. 370, 50 L. Ed. 652 (1906);

Blair v. United States, 250 U.S. 273, 39 S.Ct. 468, 63 L.Ed. 979 (1918).

See also *Wilson v. United States,* 221 U.S. 361, 31 S.Ct. 358, 55 L.Ed. 771 (1910);

United States v. White, 322 U.S. 694, 64 S.Ct. 1248, 88 L.Ed. 1542 (1944), (involving the books and records of an unincorporated association, *i.e.*, a union).

The Court has held that contempt proceedings were inappropriate where the witness refused to disclose the whereabouts of union books and records since the *subpoena duces tecum* required only the production of such books and records but could not compel the petitioner to reveal the contents of his mind.

Cuircio v. United States, 354 U.S. 118, 77 S.Ct. 1145, 1 L.Ed.2d 1225 (1957).

The Court has held that one may be compelled to testify before a grand jury after refusing on grounds of self-incrimination where the witness was granted immunity.

Brown v. United States, 359 U.S. 41, 79 S.Ct. 539, 3 L.Ed.2d 609 (1959);

Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038, 4 L.Ed.2d 989 (1960);

Piemonte v. United States, 367 U.S. 556, 81 S. Ct. 1720, 6 L.Ed.2d 1028 (1961).

These cases were overruled, however.

Harris v. United States, 382 U.S. 162, 86 S.Ct. 352, 15 L.Ed.2d 240 (1965).

Other miscellaneous waiver and contempt cases are:

Regan v. People, 349 U.S. 58, 75 S.Ct. 585, 99 L.Ed. 883 (1955);

Stevens v. Marks, 383 U.S. 234, 86 S.Ct. 788, 15 L.Ed.2d 724 (1966);

St. Pierre v. United States, 319 U.S. 14, 63 S.Ct. 910, 87 L.Ed. 1199 (1943);

In re Michael, 326 U.S. 224, 66 S.Ct. 78, 90 L. Ed. 30 (1945);

In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948).

In *Hoffman v. United States,* 341 U.S. 479, 71 S.Ct. 814, 95 L.Ed. 1118 (1951), the Court upheld the right to refuse to testify before a grand jury on the grounds of self-incrimination and noted the protective function of the grand jury and certain limitations on investigation.

See also:

Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962);

Stirone v. United States, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960);

Ex parte Bain, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed. 849 (1887);

Hannah v. Larche, 363 U.S. 420, 80 S.Ct. 1502, 4 L.Ed.2d 1307 (1960) (dissenting opinion);

Jenkins v. McKeithen, 395 U.S. 411, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969);

Shillitani v. United States, 384 U.S. 364, 86 S. Ct. 1531, 16 L.Ed.2d 622 (1966).

Use of the grand jury as the tool of the prosecutor (unsuccessful and successful) is found in:

United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S.Ct. 811, 84 L.Ed 1129 (1940);

United States v. Proctor and Gamble Company, 356 U.S. 677, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1958);

Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395, 79 S.Ct. 1237, 3 L.Ed.2d 1323 (1959).

Occasionally the use of the grand jury as a private discovery tool of the prosecutor has been too much for the Court.

See:

Dennis v. United States, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966).

Occasionally, the Court has found bias on the part of the grand jury.

Cammer v. United States, 350 U.S. 399, 76 S.Ct. 456, 100 L.Ed. 474 (1956);

Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955, 8 L.Ed.2d 98 (1962).

Various procedural and other matters have been raised and considered by the Court.

Perlman v. United States, 247 U.S. 7, 38 S.Ct. 417, 62 L.Ed. 950 (1918);

Costello v. United States, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed. 397 (1956);

Holt v. United States, 218 U.S. 245, 31 S.Ct. 2, 54 L.Ed. 1021 (1910);

Lawn v. United States, 355 U.S. 339, 78 S.Ct. 311, 2 L.Ed.2d 321 (1958);

Logan v. United States, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429 (1892);

Harlan v. McGourin, 218 U.S. 442, 31 S.Ct. 44, 54 L.Ed. 1101 (1910);

Badders v. United States, 240 U.S. 391, 36 S. Ct. 367, 60 L.Ed. 706 (1916);

United States v. Johnson, 319 U.S. 503, 63 S.Ct. 1233, 87 L.Ed. 1546 (1943);

Sullivan v. United States, 348 U.S. 170, 75 S.Ct. 182, 99 L.Ed. 210 (1954);

Lang v. New Jersey, 209 U.S. 467, 28 S.Ct. 594, 52 L.Ed. 894 (1908);

Hyde v. United States, 225 U.S. 347, 32 S.Ct. 793, 56 L.Ed. 1114 (1912);

Reynolds v. United States, 98 U.S. 145, 25 L. Ed. 244 (1878);

Michel v. State of Louisiana, 350 U.S. 91, 76 S. Ct. 158, 100 L.Ed. 83 (1955);

People of the State of New York v. O'Neill, 359 U.S. 1, 79 S.Ct. 564, 3 L.Ed.2d 585 (1959).

The thrust of petitioner's argument goes not to the inquisitorial function and the broad powers of the grand jury granted by the Fifth Amendment, but rather, to the usurpation of these powers by the Government which in effect destroys the concomitant and equally important function of the grand jury as a protector of the people from the prosecutorial powers of the Government.

See *Smith v. United States,* 360 U.S. 1, 79 S.Ct. 991; 3 L.Ed.2d 1041 (1959) in addition to the previously cited cases upholding this proposition.

In essence, the argument of the petitioner is that this problem is greater than the sum of its parts. Respondent has cited in its brief cases which uphold the right of the Government to take each of the actions which occurred in this case. Other cases cited, *infra,* demonstrate that not only these, but also, other actions by Government agents which used the powers of the grand jury have been sanctioned by the courts.

The following is an illustrative, but not exhaustive, group of cases demonstrating the practices engaged in

by the Government and upheld by the courts. Grand jury subpoenas were issued by an assistant district attorney who signed the name of the grand jury foreman to them.

Martin v. Beto, 397 F.2d 741 (5 Cir., 1968). Indictment based entirely upon hearsay;

Costello v. United States, 350 U.S. 359, 76 S. Ct. 406, 100 L.Ed. 397 (1956).

The suspicion that the prosecution was using illegally obtained evidence to secure a grand jury indictment where a previous indictment had been dismissed because of the source of the same evidence was held to be groundless.

Lawn v. United States, 355 U.S. 339, 78 S.Ct. 311, 2 L.Ed.2d 321 (1958).

The United States Attorneys' Office obtained evidence from the court which had retained possession of evidence presented in a civil action which was subsequently dismissed in order to present the evidence to a grand jury and obtain a perjury indictment.

Perlman v. United States, 247 U.S. 7, 38 S.Ct. 417, 62 L.Ed. 950 (1918).

After a motion to suppress evidence illegally obtained by the United States Government was granted in criminal proceeding, the Government obtained a *subpoena duces tecum* from a grand jury in order to obtain the same evidence to be used in a civil action.

Dugan and McNamara, Inc. v. United States, 153 F.Supp. 389 (U.S. Ct. of Claims, 1957).

The Government obtained issuance of a grand jury *subpoena duces tecum* by the Clerk of the Court while

the grand jury was in recess and before a new grand jury had been summoned.

United States v. Morton Salt Company, 216 F. Supp. 250 (D.C. Minn., 1962).

The Government also cites case authority for the proposition that the grand jury may have the assistance of accounting experts to examine and explain books and records. An examination of these cases reveal the following factors (1) the proposition is stated as a general rule without the citation of any other case authority to support it; (2) the factual situations differ materially from the instant case; (3) the courts have imposed restrictions upon the methods used to examine the evidence by the investigators or have placed restrictions upon the ultimate use of such information.

Furthermore, in *United States v. Invader Oil Corporation,* 5 F.2d 715 (9 Cir., 1925), the court states that:

> "There is no authority in the court to direct that exhibits be delivered to investigators, although the grand jury, having before it a witness suitably qualified, may cause such witness to make his examination and report the facts; all the while the custody of the records so produced being that of the grand jury."

Thus the decisions in these lower court cases must be limited to the particular factual situation involved, such as anti-trust investigation which is not applicable here, or the power must be circumscribed and the procedural necessities must be observed in order to preserve the secrecy of the grand jury investigation which has not been done in the instant case.

Any argument upholding the right of Government agents to proceed as they have done which proceeds step by step pointing out case authority for the separate actions engaged in by these agents may often be supported by a decision upholding such action. In each instance the decision of a court affirming the right of the Government agents to proceed in a particular manner may be reasonable in relation to the administration and enforcement of the law as compared to the prejudicial effect it has on the opposing party in a particular case.

However, the cumulative effect of all the decisions is that bit by bit, step by step, and instance by instance, the inquisitorial and investigative powers of the grand jury have been assumed by agencies of the Government without the counterbalancing of an assumption of the concomitant and necessary protective powers of the grand jury. Although the proposition that the prosecuting agency may not use for its own purposes the processes available to the grand jury is stated in such cases as *In re Dymo Industries, Inc.*, 300 F.Supp. 532 (D.C. N.D. Cal., 1969) and *Durbin v. United States*, 94 U.S. App. D.C. 415, 221 F.2d 520 (1954), but few, if any, opinions have ever discerned such abuse.

The structure and organization of governmental agencies make it impossible for these units to adopt the protective function of the grand jury. The instigation of inquiry, the gathering of evidence and the prosecution of an action are functions which have become specialized, fractionated and divided among a host of governmental agencies. No single agency of the administrative branch of the Government has the responsibility or the power to review the entire case in perspective.

It is submitted that this latter function is that of the grand jury and the primary rationale for its existence.

An absolute prerequisite to the performance of this function is that the grand jury have access to all of the facts in the case.

> *Smith v. United States, supra,* (dissenting opinion).

The presentation of evidence to the grand jury by agents of the Government who have of necessity sifted and culled a vast body of information down to a manageable quantity which may be usefully presented to the members of the grand jury as anathema to the above stated principle. No employee of a governmental agency could conceivably conduct an investigation of a vast quantity of information without knowing the purpose of the investigation. Without such knowledge, any and every bit of data will be relevant to some investigative conclusion and therefore no winnowing of the information would be possible at all unless the purpose of the search were known to the investigator.

Such knowledge of the purpose of the investigation inevitably and inexorably exerts a pressure on an investigator to find every scrap of evidence which relates to the purpose of the investigation. For an investigator to do otherwise would be to fail in his duties. Petitioner hastens to add that no implication is being made that an investigator would neglect to include evidence which would tend to disprove any irregularity on the part of the party whose records were being examined. It is to be assumed that neither the employees nor the heads of governmental agencies would let their desire to prove a certain result influence the gathering of information.

It must be noted, however, that the investigator must of necessity submit some type of report or résumé concerning the investigation. It is, of course, the function of the grand jury to weigh the evidence in order to determine if a sufficient quantum of affirmative evidence has been presented to return an indictment. However, before the evidence is presented to the grand jury, the evidence is filtered through several layers of administrators within a given agency and then turned over to another agency for presentation. Although the evidence may be presented by a witness who was the original investigator and thus the same person is testifying, the information has passed through a process whereby it is focused on a few major points in order that the information be of a quantum which is manageable and organized in a manner which makes it capable of coherent presentation to a grand jury.

Also, it is a member of a different governmental organization who is directing the giving of the testimony and information may not necessarily be presented in the same light nor to the same extent as was contemplated by the investigative agency. Thus, by necessity, a grand jury does not have all of the evidence presented to it.

It is not the argument of petitioner that it is to be presumed that a governmental agency has abused its discretion or neglected its duties, but rather that the potential for abuse or neglect is patently present and that this runs counter to our system of government which is predicated on the system of checks and balances.

As the Constitution itself is drafted, no one branch of government is free to exercise its powers unchecked.

This prevents not only the conscious and deliberate usurpation of power by one branch of the government, it wisely provides a check on the overzealous or erroneous encroachment by one branch of government on the powers of another branch.

Therefore, it is the contention of petitioner that the time has long since come and passed when the gradual and almost imperceptible trend of the erosion of the powers of the grand jury must be stopped. As it stands now, the grand jury is a hollow shell of an institution, bereft of its independence and powerless to exercise its protective function by a weighing of evidence presented by impartial witnesses and experts.

Petitioner therefore respectfully urges this Court to begin immediately the process of reversing this ignominious trend and restoring the grand jury to its necessary independence by refusing to allow the wholesale distribution of *subpoenas duces tecum* in blank by the clerk of the court to be filled in by any governmental agency with the opportunity and the inclination to have the broad inquisitorial and investigative powers of the grand jury or to gratuitously bestow these powers on any other governmental agency merely by having the *subpoena duces tecum* issued in its name in order to aid another agency which does not have the prerogative of issuing such a subpoena itself.

Such a decision would of course represent only the first tentative steps in reversing the erosion of the powers of the grand jury. But it would serve notice that the grand jury as an independent institution is not powerless and obsolete.

III.

Conclusion.

We pray the Court that it grant this Petition for Rehearing of the order denying certiorari, that it grant certiorari, and that *Donaldson, Lewis* and this case be heard together.

Respectfully submitted,

WILLIAM J. CURRER, JR.,
Counsel for Petitioners, Owen B. Lampman and Thriftimart, Inc.

Certificate of Counsel.

I, WILLIAM J. CURRER, JR., do hereby certify:

1. I am a member of the bar of the Supreme Court of the United States and duly enrolled upon the roll of attorneys and counsellors of that Court.

2. I represent before this Court Owen B. Lampman and Thriftimart, Inc.

3. I have prepared the foregoing Petition for Rehearing and it is presented in good faith and not for delay.

4. The said petition is restricted to the grounds specified in Rule 58(2).

5. My manuscript signature has been manually signed by me on one of the forty copies of the said petition and this certificate filed with the clerk as required by Rule 58.

Dated: March 5, 1970.

WILLIAM J. CURRER, JR.,
Counsel for Owen B. Lampman and Thriftimart, Inc.